

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**Investigation by the Department of
Telecommunications and Energy on its own
motion, into the service quality of Boston Edison
Company, Cambridge Electric Light Company,
and Commonwealth Electric Company,
d/b/a NSTAR Electric**

**D.T.E. 99-19
D.T.E. 01-65
D.T.E. 01-71A**

**COMMENTS OF THE
ATTORNEY GENERAL AND THE DIVISION OF ENERGY RESOURCES**

I. INTRODUCTION

By letter dated August 10, 2001, the Department of Telecommunications and Energy (“Department”) ordered Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/ b/ a NSTAR Electric (“NSTAR” or “Company”) “to undertake an examination of the underlying causes for the distribution system outages experienced during Summer 2001, a diagnosis of any operational or physical problems in the distribution system, and a plan to reduce or, where feasible, eliminate the risk of recurrence.” Chairman Connelly’s August 10, 2001 Letter to Thomas May, President and Chief Executive Officer NSTAR, p.1. On August 24, 2001, the Department opened an investigation into the service quality of NSTAR stating that it would focus its investigation on (1) the Company's diagnosis of operational or physical plant difficulties that could cause significant electricity outages within the Company's distribution system; and (2) the Company's procedures to issue comprehensive reports to consumers relating to significant electricity outages. The Department also directed NSTAR to submit information pertaining to the adequacy of load growth

forecasting, the appropriateness of communications and notification procedures, the aptness of plans to restore critical service or ease prolonged outages, and personnel availability. The Company filed its Report on System Reliability on October 29, 2001.¹

The Department held public hearings between November 26, 2001 and November 29, 2001, in Brookline, Stoneham, Boston, New Bedford, Medfield, Hyannis and Arlington, Massachusetts and heard comments from the public on NSTAR's service quality and its October 29 filing. The Department held an additional public hearing at its offices on January 17, 2002.

The Department has also requested Comments on this proceeding. The Office of the Attorney General ("Attorney General"), and Division of Energy Resources ("DOER"), provide Joint Comments on the NSTAR filing and their recommendations concerning how to proceed in the Department dockets investigating the Company's service quality and distribution outages. D.T.E. 01-71A and D.T.E. 01-65.

Based on NSTAR's admission in its System Reliability Reports that it has failed to properly manage, operate, and maintain its distribution system, the Attorney General and DOER recommends that the Department levy the maximum statutory service quality penalty allowable of \$22.5 million² for the period September 1, 1999 to August 31, 2001, and requests that this penalty be credited to customers through a reduction in distribution rates. Furthermore, given

¹ The Company has scattered its service quality performance data in four separate proceedings, D.T.E. 99-19, D.T.E. 99-84, D.T.E. 01-65 and D.T.E. 01-71A. The Department should consolidate all data, pertinent materials and testimony into this docket so that it can make a comprehensive review and disposition concerning the service provided by the Company since the merger. *See* 220 C.M.R 1.10(3) (incorporation by reference). The Department may have to hold additional evidentiary hearings in order to provide the Company an opportunity to address its admitted imprudence and allow it an opportunity to be heard concerning the penalties requested herein.

² Maximum Penalty Amount according to the Company's own calculation. *See* D.T.E. 01-71A, Exh. NSTAR-3, Attachment B, p. 1.

the admissions contained in the Company's System Reliability Reports and the comments received from the Company's customers at the public hearings, the Attorney General and DOER request that the Department conduct a Post-Merger Management Audit of NSTAR to determine the ability and desire of the Company's management to carry out its public service obligation.

II. THE FILING IN THIS PROCEEDING CONTAINS ADMISSIONS OF IMPRUDENCE IN THE OPERATION AND MAINTENANCE OF THE COMPANY'S DISTRIBUTION SYSTEM

A. THE COMPANY'S SYSTEM RELIABILITY REPORT CLEARLY INDICATES THAT THERE HAS BEEN A WIDESPREAD FAILURE TO REASONABLY MANAGE, MAINTAIN AND OPERATE ITS DISTRIBUTION SYSTEM

The Company hired ABB Consulting, KEMA Consulting and Stone and Webster to undertake an examination of the causes of the outages. ABB Consulting determined that there are a number of issues that have affected the ability of NSTAR to maintain and operate its distribution system.³ "ABB is convinced that there is a very large and growing backlog of both preventative maintenance (PM) and corrective maintenance (CM) work." ABB Report Appendix A, Vol. II, p. 5. From its review, ABB determined that "[i]t is obvious . . . that NSTAR fell behind the necessary CM work in late 1999 or early 2000," a period in which there was a decrease in capital spending.⁴ *Id.*, p. 6. ABB's review of the ten most critical substations

³ ABB's conclusions and recommendations were based on only a "two week assessment" of the NSTAR distribution system and its operation and planning functions. ABB Report Appendix A, Vol. II, p. 2. Although it appears that ABB has identified a number of significant reliability issues, the Attorney General and DOER believe that a more in-depth independent analysis of the Company's operations is required.

⁴ The reductions in spending on Capacity improvements, played a role in the events of the summer of 2001. ABB Report Appendix A, Vol. II, p. 6. "The most significant items here are the decrease in spending on the 4 kV System Replacement, on System Failure Replacements and on Capacity. *Id.* "The failure to fund System Failure Replacement is directly tied to the corrective maintenance backlog while the 4 kV System Replacement Program targeted replacing elements of the

on the NSTAR system shows a deterioration in reliability since 1999. The consultants also found other issues that have affected the ability of NSTAR to maintain and operate the system. “Primary among these issues is a lack of seamless integration in the systems and processes central to running and maintaining the system, the trouble call management system, and the work and management scheduling system.” *Id.*, p. 9.

These deficiencies in the Company’s system have had real and dramatic impacts on the Company’s customers. The Company’s self-assessments show that it saved millions of dollars by decreasing capital spending on the distribution system, allowing the Company to increase its earnings while customers paid the price with blackouts.

B. CUSTOMER STATEMENTS AT THE PUBLIC HEARINGS SUPPORT THE COMPANY’S ADMISSIONS OF IMPRUDENCE

Significant numbers of customers appeared at the Department’s public hearings to complain about the service quality of NSTAR. The complaints appear to be particularly concentrated in the Boston Edison service territory, although there were also substantial reliability complaints in the Commonwealth Electric service territory. During the hearings, public officials, individual ratepayers, small business people and spokespersons for major corporations, vociferously criticized the Company's management and management policies. These customers described numerous outages over the past two years which resulted in personal and business losses,⁵ school closings and medical emergencies. *See e.g.* Tr. Stoneham Public Hearing, pp. 28-32; Tr. Medfield Public Hearing, pp. 22-23; Tr. Hyannis Public Hearing, pp. 33-36. In Stoneham, the outages were continuing without abatement at the time of the hearing. Tr.

distribution system “that presently make the greatest contribution to system interruption duration.” *Id.*

⁵ It is unclear whether the Company notified all customers of its outage claims process.

Stoneham Public Hearing, pp. 34 and 35 (21 outages since September 4, 2001 some extensive).

Customers also identified NSTAR billing problems within the towns. Tr. Stoneham, p. 31. “The public is very frustrated, constantly calling and not being able to get through to a call center; then when they do get through, not being given accurate information so that they can plan. Tr. Medfield, p. 25. Town E-911 systems were also acting as an NSTAR call center.”⁶ *Id.*

In all the time I've been here, when Boston Edison serviced us, I never had power outages; I don't think but maybe once or twice, two or three minutes, in 37 years, before NSTAR took over.

Whoever was running Boston Edison, that management that was in charge at the time, all through that period; but when NSTAR took over -- please put those people back in charge again, because they knew what they were doing, and they did it well.

Tr. Stoneham, pp. 75-76. The statements from customers clearly indicate that service quality has deteriorated since the merger. It is now time for the Department to recognize and determine the cause of the degradation in service and raise service quality back to the levels provided by the Company prior to the merger.

III. THE DEPARTMENT SHOULD PENALIZE THE COMPANY FOR ITS IMPRUDENCE

Contemporaneous with filing its Report on System Reliability, NSTAR filed its service quality plans with a penalty provision. “The Department previously has found that a penalty provision is an important and necessary component of a service quality plan in that it provides companies with a direct financial incentive motivation to meet or exceed established

⁶ The overloading of E-911 systems could have had serious consequences for public safety. “People couldn't get through to the police and fire station because there were so many phone calls coming in. That is a problem for emergency services if we had a call for an ambulance.”

Tr. Medfield, p. 29.

performance standards.” *Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Commonwealth Gas Company*, D.T.E. D.T.E. 99-19, p. 106 citing *NIPSCO-Bay State Acquisition*, D.T.E. 98-31 at 31-32 (1998); *Boston Gas Company*, D.P.U. 96-50-C at 71-72 (1997); *Boston Gas Company*, D.P.U. 96-50 (Phase One) at 310 (1996); *NYNEX Price Cap*, D.P.U. 94-50, at 235-238 (1995).

For the period September 1, 1999 through August 31, 2001, which coincides with the outages at issue, NSTAR proposes a mere \$3.2 million penalty. It then proposes to reduce this minimal penalty further by approximately \$ 1 million for voluntary payments it made to individual customers injured as a result of last summer’s outages. *See* D.T.E. 01-71A. While such service quality penalties may arguably provide the appropriate incentives for the typical business, they are clearly unreasonable for a Company with over \$700 million in annual revenues. According to the ABB Report, the Company has avoided spending millions of dollars for maintenance and distribution related investments to the benefit of its shareholders while making its customers pay the price in extended distribution outages. With capital and operating budgets totaling well in excess of \$200 million per year a decision not to spend tens of millions of dollars to maintain reliability may be viewed as “economic,” given the “risk” of incurring a maximum reliability “penalty” of \$5 million.⁷

There is a need to provide NSTAR with the appropriate incentives given the total costs involved. Therefore, the Attorney General and DOER recommend that the Department assess NSTAR the full penalty permitted by law, “2 per cent of such company's transmission and

⁷ Capital spending by NSTAR is well in excess of \$50 million per year. ABB Report Appendix A, Vol. II, pp. 6-7. The total operating budget is approximately \$160 million per year. *Id.* Maximum penalties for reliability are approximately \$ 5 million. D.T.E. 01-71 Exh. NSTAR-3.

distribution service revenues” or \$22.5 million, for the period September 1, 1999 to August 31, 2001, and that this money be refunded to customers as a credit to distribution service.⁸ G.L. c. 164, § 1E.

IV. THE DEPARTMENT SHOULD ORDER AN INDEPENDENT POST-MERGER MANAGEMENT AUDIT OF NSTAR

Based on the customer comments and NSTAR self-assessments, the Attorney General and DOER have concerns about the ability and desire of NSTAR’s management to carry out its public service obligation. The evidence submitted by the Company in this case indicates that it has failed to properly maintain its distribution system. There is also additional evidence that customer service deteriorated in other areas. There have been complaints that the Company is unable to properly render bills. Tr. Stoneham, p. 31. Customers cannot call the Company and receive accurate information concerning outages. Tr. Medfield, p. 25. There are low voltage problems. Tr. Medfield, pp. 27-28. The Company has improperly transferred customers from Standard Offer to Default Service. *See* January 15, 2002 NSTAR Letter to Chairman Connelly (at least 23,700 improperly switched from Standard Offer to Default Service).

The NSTAR reports and customer comments provide substantial evidence that the system reliability has been deteriorating since late 1999 or early 2000, the time of Boston Edison Company’s merger with Commonwealth Energy System. Based on the public comments and

⁸ The Department has yet to make a final determination of penalties to be assessed under the service quality provisions of the merger plan. D.T.E. 99-19, p. 107. The Company’s compliance filing in D.T.E. 99-19 was filed on October 29, 2001. There has not been an adjudication of this filing. “The department is authorized and directed to oversee quality and reliability of service and to require that quality and reliability are the same as or better than levels that exist on November 1, 1997.” G.L. c. 164 § 1F (7).

Company's filing, a broader and more comprehensive examination of operations of NSTAR is appropriate.

The Department has general supervisory authority to ensure that a company's management decisions are made and carried out in a manner consistent with the public interest.⁹ *Commonwealth Electric Company*, D.P.U. 89-114/90-331/90-81 Phase One, p. 193 (1991); G.L. c. 164, § 76.

In a general rate proceeding, the Department may review a Company's operations through a retrospective examination of the prudence of individual actions. However, in circumstances where such an individualized review is not sufficient to determine if a company has met its service obligations to ratepayers, the Department is obligated to go further and examine its management policies.

Commonwealth Electric Company, D.P.U. 89-114/90-331/90-81 Phase One, p. 194. The customer comments and the NSTAR self-assessments make clear that this is one of times when the Department "should go further" and conduct an independent management audit.¹⁰

Specifically, the Department should order an Independent Post-Merger Audit of NSTAR.¹¹ "The

⁹ The Department has ordered two management audits of electric companies. It first ordered an audit in a situation in which management had "ceased to manage," *Boston Edison Company*, D.P.U. 86-266-A/85-271-A, p. 9 (1986); it ordered the second in regard to specific management issues relating to expenditures, planning and cost containment which had lead to customers having very little, if any, confidence in management's ability to serve the public interest. *Commonwealth Electric Company*, D.P.U. 89-114/90-331/90-81 Phase One, pp. 197-198 (1991)

¹⁰ "Throughout all of this, the overwhelming majority of people have been unable to actually speak with an Nstar representative. Instead, most customers only hear a recorded message."

* * *

"Rather than act as a benefit to the public, voice mail seems to have become a shield for Nstar behind which there is little accountability." Mayor Thomas M. Menino Letter to Chairman James Connelly, July 2, 2001.

¹¹ "Such an independent audit could free the results from the kind of biases inherent in the Company's own data." *New England Telephone*, D.P.U. 86-33-G, p. 141. Furthermore, the audit should not be performed by a firm which has significant business with NSTAR.

audit should produce an independent, objective, and comprehensive overview of the management and operations of the Company.” *New England Telephone*, D.P.U. 86-33-G, p. 141 (1989). That audit should include, but be not limited to:

- * The Performance of the Company in Managing and Maintaining the Transmission and Distribution System;¹²
- * The Performance of the Company in Planning for Expansion of the Transmission and Distribution System to Meet Customer Needs;
- * The Quality of the Voltage Delivered and Line Losses;
- * Storm and Unusual Event Preparation and Response;
- * Call Center Performance;
- * Information Technology Operation and Integration;
- * Personnel Deployment and Training
- * Security Preparations; and,
- * Accounting Billing and Collections

In D.T.E. 99-19, the Department concluded that customers would suffer “no net harm” as a result of the merger between NSTAR and ComEnergy. “Ratepayers would be at least as well off with the proposed base rate freeze as they would be absent the proposed merger.” *Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Commonwealth Gas Company*, D.T.E. D.T.E. 99-19, p. 24 . Upon receipt of the Independent Post-Merger Management Audit, the Department should hold additional hearings and receive comments concerning further actions that may be necessary to determine if in fact customers have suffered “no net harm” as a result of the merger. *See New England Telephone*, D.P.U. 86-33-G, p. 142 (the Department retains the statutory authority to open an investigation of the Company's rates and make any adjustments that then appear necessary based on the record in such a docket.)

¹² Included in this determination should be a finding as to whether NSTAR has engaged in labor displacement or reductions below staffing levels in existence on November 1, 1997, that were not part of a collective bargaining agreement or agreements between the company and the applicable organization or organizations representing such workers. *See G.L. c. 164 § 1E(b).*

“There is no such thing as a reasonable rate for service that is deficient.” C. Philips, *The Regulation of Public Utilities* 553 (1993).¹³ A utility must be efficiently and economically managed and operated as a condition to the exercise of its right to impose rates adequate to cover the full cost of service and thus satisfy the investor requirement. *See Boston Edison Company*, D.P.U. 86-226-A/85-271-A, p. 14 (an allowed rate of return at the lower limit.) As the Department noted in its NSTAR merger decision, *Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and Commonwealth Gas Company*, D.T.E. 99-19, the Company’s proposed service quality plan “does not include a mechanism to penalize the companies for degradation in service.” *Id.*, p. 106. The merger plan “did not provide the companies with the direct financial incentive or motivation to meet or exceed the established benchmarks, which the Department has previously found necessary.” *Id.*, p. 107. However, the Department directed the Company “to file a proposal for a penalty mechanism within six months of the date of the closing of the merger,” and indicated that it would “investigate establishing penalties at such time. . .” *Id.*, p. 107. Now is the time for the Department to act before there is a occurrence of further serious service quality problems.

V. CONCLUSION

Therefore, the Attorney General and DOER recommend that the Department levy the maximum statutory service quality penalty allowable of \$22.5 million for the period September

¹³ The US Supreme Court has held that a utility’s “[r]eturn should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, **under efficient and economical management**, to maintain and support its credit and enable it to raise the money necessary for the discharge of its public duties.” *Bluefield Waterworks v. Public Service Commission*, 262 U.S. 679, 693 (1923) (emphasis added).

1, 1999 to August 31, 2001, and further request that this penalty be credited to customers through a reduction in distribution rates. In addition, the Attorney General and DOER request that the Department conduct a Post-Merger Management Audit of NSTAR to determine the ability and desire of the Company's management to carry out its public service obligation.

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